IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16/04/2004

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.No.38111 of 2003
W.P.No.38112 to 38114 of 2003
and W.P.M.P.Nos.46271 to 46274 of 2003

Khivraj Motors Limited,
623, Anna Salai
Chennai - 600 006
represented by its Director
Mr.Ajit Kumar Chordia ... Petitioner in all W.Ps.

-Vs-

1. Assistant Commissioner (CT)
Fast Track Assessment Circle III
Chennai - 600 006

2. Assistant Commissioner (CT) - III
North Zone
Chennai .. Respondents in all W.Ps

For Petitioner : Mrs.Anita Sumanth
For Respondent : Mrs.Saraswathy Sivaraman Aiyer,G.A.

Prayer: These Writ Petitions are filed under Article 226 of The Constitution of India for the relief of issuance of a writ of certiorari as stated therein.
:ORDER
The writ petition in W.P.No.38111 of 2003 is filed for the relief of issuance of a writ of certiorari to call for the records in No.Rc.18 50/2003/A1 dated 9.12.2003 relating to assessment year 1994-95 and quash the same and direct the first respondent to pass an appropriate order after hearing the petitioner and examining the documents.
2. The writ petition in W.P.No.38112 of 2003 is filed for the relief of issuance of a writ of certiorari to call for the records in No. Rc.1850/2003/A1 dated 9.12.2003 relating to assessment year 1995-96 and quash the same and direct the first respondent to pass an appropriate order after hearing the petitioner and examining the documents.

3. The writ petition in W.P.No.38113 of 2003 is filed for the relief of issuance of a writ of certiorari to call for the records in No. Rc.1850/2003/A1 dated 9.12.2003 relating to assessment year 1996-97 and quash the same and direct the first respondent to pass an appropriate order after

hearing the petitioner and examining the documents.

4. The writ petition in W.P.No.38114 of 2003 is filed for the relief of issuance of a writ of certiorari to call for the records in No. Rc.1850/2003/A1 dated 9.12.2003 relating to assessment year 1997-98 and quash the same and direct the first respondent to pass an appropriate order after hearing the petitioner and examining the documents.
5. In all these writ petitions, the assessee assailed the order of the Assistant Commissioner (CT) Fast Track, Assessment Circle III, Chennai 6 dated 9.12.2003 rejecting the application filed under Section 55 of the Tamil General Sales Tax Act to rectify the respective assessment orders.

6. The case of the petitioner as seen from the petition filed under Section 55 of the T.N.G.S.T Act, dated 8.8.2003 is as follows:-
The petitioner is an assessee on the file of the Assistant Commissioner (CT) III for the assessment years 1994-95 and 1995-96 and on the file of the Assistant Commissioner (CT) Fast Track Assessment Circle III Chennai from the Assessment Years 196-97 onwards. In respect of the assessment year 1994-95, the taxable turnover of the petitioner under the T.N.G.S.T.Act was determined at Rs.34,57,89,342/-. The tax due on the aforesaid turnover was determined at Rs.2,01,39,841/- in addition to Surcharge and Additional Surcharge. The total tax due including sales tax, surcharge, additional surcharge and turnover tax was Rs.3,26,32,859/-. During the said year, the petitioner paid a sum of Rs.3,34,91,854/- as Entry Tax and consequently in terms of the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990, the entire sum of Rs.3,34,91,854/- was liable to be adjusted and the excess amount of entry tax paid has to be refunded to the petitioner. The petitioner was thus entitled to refund in a sum of Rs.8,58,995/- in respect of the assessment year 1994-95. However, the Assessing authority has adjusted entry tax to the extent of tax payable under the T.N.G.S.T Act and has declined to refund the excess amount paid as Entry Tax. The excess amount between the tax payable under the T.N.G.S.T Act on the sale of the Cars and the tax paid under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990, in a sum of of Rs.8,58,995/- has not been refunded. This is a patent error in the order of the assessment. The order of assessment was originally made on 28th February 2000 but was subsequently revised on 30th November 2001. Hence the rectification has to be made and the and the excess Entry Tax of Rs.8,58,995/- has to be refunded.

7. Similar is the request of the petitioner in respect of other assessment years, which are subject matter of other writ petitions.

8. Learned counsel for the petitioner submits that the petitioners are entitled to get refund of the differential amount between the Sales Tax payable under the T.N.G.S.T Act and the Entry Tax paid under the Tax on Entry of Motor Vehicles into Local Areas Act 1990, for which submission learned counsel for the petitioner relied on a Division Bench judgment of this Court dated 26.9.2001 made in W.A.NO.122 8 of 1996 by a Division Bench of this Court.
9. Except relying on the judgment, learned counsel for the petitioner has not referred to any other statutory provisions either in the T.N.G.S.T Act

or in the Tax on Entry of Motor Vehicles into Local Areas Act 1990 to sustain its claim for refund of amount. The learned counsel simply submitted that as the Division Bench has directed to refund the excess differential amount between the liability of tax under the T.N.G.S.T. ACT and liability of the tax under the Entry Tax Act. Hence, the petitioner is also entitled for refund.

10. I heard the learned Government Pleader, who argued for sustaining the order of the first respondent.

11. The order impugned in these writ petitions came to be passed by the Assessing Officer under the T.N.G.S.T.Act in view of the direction issued by this Court on the petitioner filing a writ petition seeking direction to the Assessing Officer to dispose of the representation of the petitioner dated 18.3.2003 within a period of one month from the date of receipt of copy of the order. The Assessing Officer in obedience to the directions issued by this Court passed the impugned order. I am of the view that the Assessing Officer would not have ventured to pass the impugned order when he was directed to dispose of the representation of the petitioner in accordance with law only.

12. As already stated, the petitioner filed an application under Section 55 of the T.N.G.S.T.Act to rectify the mistake. Section 55 of the T.N.G.S.T.Act empowers the assessing authority or the appellate authority or the revisional authority including the Appellate Tribunal at any time within five years from the date of any order passed by it rectify any error apparent on the face of the record. Admittedly, the request of the petitioner so made cannot at all by any stretch of imagination be considered to be a request under Section 55 of the T.N.G.S.T.Act to rectify an error apparent on the face of the assessment order. Similar provisions for rectification of errors have been made in Section 154 of the Income-tax Act, 1961, Section 51 of the Estate Duty Act, 1953, Section 35 of the Wealth Tax Act, 1957 and in other fiscal statutes. Order 47 Rule 1 of the Civil Procedure Code also provides for a review of the order passed by the Civil Court, where it considered that there is an error apparent on the face of the record. A large volume of judicial interpretation has gathered around the interpretation of the expression "apparent from the record" occurring in the above Sections. The one uniform principle that runs through the catena of decisions is that "a mistake apparent on record" must be an obvious and apparent mistake and not something, which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. (See T.S.Balaram, Income-tax Officer vs. Volkart Brothers, (1971) 82 ITR page 50 at page 58 (Supreme Court), NORTHERN INDIA CATERORS VS. LT.GOVERNOR (1980) 45 STC 212 at page 216 (Supreme Court)). An erroneous decision on a point of law is not an apparent error. Under Section 55, an order passed by the authority may be open for rectification inter alia if there is a mistake or an error on the face of the record. An error, which is not self evident and is to be deducted by process of reasoning can hardly be said to be an error apparent on the face of the record justifying the authorities to exercise its power under Section 55. In exercise of the jurisdiction conferred on the authorities under Section 55, it is not permissible even for erroneous decision to be re-heard and corrected. A rectification petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise. (See PARISON DEVI AND OTHERS

VS. SUMITRA DEVI (1998(1) CTC 25(SC).

13. In the order of assessment, there is no mistake, what so ever, apparent on the face of the record. Hence, the petitioner is not entitled to have an order of rectification under Section 55, but for the direction issued by this Court in the earlier writ petition. It can very well be seen from the order, the petitioner very innocuously submitted that a representation has been made on 8.8.2003 to the assessing authority without disclosing a statutory petition that has been filed under Section 55 and obtained an order to dispose of the representation.

14. It may be true that there is nothing in Article 226 of the Constitution of India to preclude the High Court from exercising the power of review, rather judicial review, which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable error committed by it. Viewing by this angle, the order impugned can very well be set aside restoring the assessment Order. However, as the learned counsel for the petitioner is relying on a decision of this Court in support of his case, this Court ventured to proceed further.

15. On the outset, it should be made clear that the tax payable under the two enactments i.e., the T.N.G.S.T Act 1959 and the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990, are different taxes. The taxable event in the former Act is sale of the goods and in the latter legislation is entry of motor vehicles into local Area Act.

16. The charging provision Section 3 in the former legislation in the Tamil Nadu General Sales Tax Act provides that every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than one lakh of rupees and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year in accordance with the provisions of the Act.

17. The term "dealer" is defined under Section 2(g) of the Tamil Nadu General Sales Tax Act, 1959 is as follows:
""dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes -
(i) A local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;
(ii) a casual trader;
(iii) a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are brought, sold, supplied or distributed;
(iv) every local branch of a firm or company situated outside the State;
(v) a person engaged in the business of transfer otherwise than in

pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
(vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
(vii) a person engaged in the business of delivery of goods on hire purchase or any system of payment by instalments;
(viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
(ix) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration."

18. However, the charging Section - Section 3 of 1990 Act provides for levy of tax, which reads that subject to the provisions of this Act, there shall be levied and collected tax on the entry of any motor vehicles into any local area for use or sale therein which is liable for registration, or for the assignment of a new registration mark in the State under the Motor Vehicles Act, 1988 (Central Act No.59 of 1988).

19. The preamble of the Act reads that the 1990 Act is an Act to provide for the levy of Tax on the entry of motor vehicles into Local areas for use or sale therein. The Statement of Objects and Reasons for enactment of the Act published in the Government Gazettee dated 20 th February 1990 reads as under:
" In order to curb the evasion of sales tax on the sale of motor vehicles which are purchased outside the State and brought into this State, the Government have decided to levy tax on entry of motor vehicles into local areas of this State either for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988 (Central Act LIX of 1988). It has also been decided not to levy the tax in respect of vehicles registered in the Union Territory or in the other States fifteen months prior to registration in the State and necessary provision has been provided for. In the case of dealers, entry tax shall be leviable on the entry of motor vehicles and the tax paid by them shall be adjusted with the tax payable by them under the Tamil Nadu General Sales Tax Act 1959 (Tamil Nadu Act No.1 of 1959). (bold supplied)
20. The two relevant provisions in the 1990 Act in the context of the present case is Section 4 and Section 11.

21. Section 4 of the Act provides for reduction in tax liability, which reads as under:
(1) Where an importer of a motor vehicle liable to pay tax under the Act, being a dealer in motor vehicles, becomes liable to pay tax under the General Sales Tax Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act No.XIV of 1970) by virtue of the sale of such motor vehicle, then his liability under those Acts shall be reduced to the extent of tax paid under this Act.

(2) Where an importer, who, not being a dealer in motor vehicles, had purchased the motor vehicle for his own use in any Union Territory, or any other State, then, his liability under this Act, shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to General Sales Tax as may be in force in that Union territory or State.

22. Section 11 of the Act provides for refund of tax, which reads as under:
"The assessing authority shall refund to a person the amount of tax and penalty, if any, paid by such person in excess of the amount due from him. The refund may be made either by cash payment or, at the option of the person, by deduction of such excess from the amount of tax and penalty, if any, due from that person in respect of any other period: provided that the assessing authority shall first apply such excess towards the recovery of any amount due in respect of which a notice under sub-section (4) of Section 10 has been issued and shall then refund the balance, if any."
23. The procedure for making the refund has been given in Rules 7 and 8, which are not material for our purpose.

24. From the fore-going statutory provisions, it is clear that in respect of a dealer, who is dealing in motor vehicles, if the dealer imports into notified area the motor vehicles, either for use or for re-sale, the dealer shall pay the tax on the entry of motor vehicles into local area at the rate as fixed by the Government on the purchase value of the motor vehicle. However, Section 4 provides for reduction of tax liability of the dealer to the extent of sales tax and additional sales tax liabile to be paid by the dealer on the sale of such motor vehicles. Under this provision, the sales tax and additional sales tax payable by a dealer in respect of a sale of a motor vehicle can be adjusted or set off can be given on the amount of entry tax paid under the provisions of the Entry Tax Act. On the face of this statutory provision, I am of the view that if the dealer paid entry tax on the taxable event of entry of motor vehicle into the local area and there again liable to pay sales tax on the vehicle being sold, the assessing officer, after determining the tax liability under the sales tax Act, shall adjust the said tax liability out of the tax paid by the dealer under the Entry Tax Act. As the tax paid under the 199 0 Act is more than the tax determined under the T.N.G.S.T.Act, the petitioner makes such a claim. If the tax payable under the Entry Tax Act is less than the tax payable on the sale of the motor vehicle, can the dealer be claimed that he is not liable to pay sales tax over and above the entry tax by taking recourse to section 4. The answer is only an emphatic "No". Section 11 provides for refund of entry tax collected over and above what the dealer is legally liable to pay. It is not the case of the petitioner herein that it has paid entry tax over and above the tax it is liable to pay. Hence, Section 11 is not applicable.

25. As per the statutory provision, the dealers like the petitioner are entitled to claim set off only in respect of the T.N.G.S.T. tax payable, on the Entry tax paid under the Entry Tax Act. If there are any differences between the tax payable under the Sales tax Act and tax paid under Entry Tax Act, the Government is entitled to retain the same with them, as it is totally

different tax. To put it differently, the dealers are not entitled to get back the entire entry tax amount on the ground that they have paid the sales tax. The statutory position is clear as stated above.

26. Now let me consider the judgment rendered by a Division Bench of this Court in W.A.No.1228 of 1996 (THE STATE OF TAMIL NADU REP.BY ITS SECRETARY TO GOVERNMENT, HINDU RELIGIOUS AND COMMERCIAL TAXES DEPARTMENT AND
ANOTEHR VS. GANESH AUTOMOBILES REP.BY ITS PARTNER G. RAMPRAKASH) Dated 26.9.2001. Though the Division Bench in the judgment narrated the facts in a detailed fashion, however, the ultimate order has been passed on the admission made by the respondent Assessing Officer that there was excess amount of tax available, but contended that there is no provision for refund under the Act. That contention was repelled by the Division Bench by referring to Section 11 of the Entry Tax Act. In order to have a clarity, it is better to extract that portion of the Order in para 7 with which the petitioner has relied upon, reads as follows:

"7. The respondents admit that there is availability of excess amount, but, they contend that there is no provision for refund under the Act. The above contention of the respondents is not correct, since section 11 of the Act provides for refund of tax under the Act in question. The learned Single Judge has also pointed out the above section and relied on it. As per section 11, the assessing authority shall refund to the person the amount of tax and penalty if any paid by such person in excess of the amount due from him. Section 10 of the Act provides for payment of entry tax and section 11 of the Act provides for refund of excess tax paid. In the present case, after adjusting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act in the entry tax paid, there is availability of excess amount of tax paid by the petitioner and as such, the petitioner is entitled for refund of such excess amount." (bold supplied)

27. I am of the view, on the reading of the reasoning given by the Division Bench, that the decision cannot be made applicable to the facts of the present case. The case before the Division Bench was one, wherein the respondent Assessing Officer admitted the availability of an excess amount of entry tax, but the only contention by him was that there is no provision for refund of the same. The Division Bench referred Section 11 of the Act and states that the excess amount of entry tax has to be refunded. The isolated sentence in the judgment to the effect that "in the present case, after adjusting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act in the entry tax paid, there is availability of excess amount of tax paid by the petitioner and as such, the petitioner is entitled for refund of such excess amount" cannot be read in isolation and contend that the Division Bench has rendered judgment what ever the tax paid over and above the sales tax as entry tax has to be refunded with reference to the provisions of both the Acts. The judgment was made on the admission made by the respondent - Assessing Officer. On facts, I already found that Section 11 is not applicable to the facts of the case. But the Division Bench rested its conclusion only on Section 11 of the Act.

28. It is well settled that the Courts should not place reliance on decisions without discussion as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read a clid's theorems nor as provisions of the Statute. These observations must be read in the context in which they appear. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases blindly placing reliance on a decision is not proper. Useful reference can be had to the judgment of the Supreme Court in the case of HARYANA FINANCIAL CORPORATION AND ANOTHER VS. JAGDAMBA OIL MILLS AND ANOTHER reported in JT 2000 (1) SC 482.

29. It is also equally settled and established principle of law that a decision is an authority for the ratio that has been raised, argued, considered and a decision rendered thereon. Hence, I am of the view that the Division Bench judgment relied on by the petitioner has not rendered me from taking a different view on the facts and circumstances of the present case, which are totally different.

30. It is held by the Supreme Court in the case of AMBICA QUARRY WORKS VS. STATE OF GUJARAT AND OTHERS reported in AIR 1987 SUPREME COURT 1073 that the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it. In the case of PADMASUNDARA RAO VS. STATE OF TAMIL NADU reported in 2002 AIR SCW 1156, it was held that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the factual situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. In the case of MOON ROCK AND MARBLE COMPANY REP.BY ITS PARTNER M.K.S.MANIAN VS. THE STATE OF TAMIL NADU reported in 1995 (I) MLJ 573, it is held by this Court that what is expressed in the judgment should be considered as a binding proposition of law and what is not expressed cannot be taken into account.

31. In view of the fore-going reasons, I am of the view that the Division Bench judgment, with which reliance has been made by the petitioner, is not applicable to the facts and circumstances of the case. In view of the discussion made above with reference to the provisions of the Entry Tax Act, particularly, Sections 4 and 11, I am of the view that the petitioner is not entitled to the relief as prayed for. Hence, the writ petitions are dismissed. No costs. Consequently, the connected W.P.M.Ps are also dismissed.

To:
1. Assistant Commissioner (CT)
Fast Track Assessment Circle III

Chennai - 600 006
2. Assistant Commissioner (CT) - III
North Zone
Chennai

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Internet: Yes